BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA



)	Rulemaking 06-04-009
Order Instituting Rulemaking to Implement)	(Filed April 13, 2006)
the Commission's Procurement Incentive)	
Framework and to Examine the Integration)	
of Greenhouse Gas Emissions Standards)	
into Procurement Policies.		
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COMMENTS OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT ON THE DECEMBER 13, 2006 PROPOSED DECISION

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I. <u>INTRODUCTION</u>

Pursuant to the California Public Utilities Commission (CPUC or Commission) rules of Practice and Procedure, the Sacramento Municipal Utility District (SMUD) provides these comments on the Proposed Decision of President Peevey and Administrative Law Judge Gottstein, *Interim Opinion on Phase 1 Issues: Greenhouse Gas Emissions Performance Standards* (Proposed Decision or PD), issued on December 13, 2006.

SMUD is a municipal utility operating in Sacramento and Placer counties. Since SMUD is not CPUC jurisdictional and not subject to the Interim Emissions Performance Standard (EPS) the CPUC began developing last spring, SMUD did not participate in workshops conducted by the CPUC as a part of this proceeding, nor did SMUD respond to the various data requests promulgated in this proceeding. Since the enactment of Senate Bill (SB) 1368, including its language about consistency between the EPS adopted by the CPUC and the California Energy Commission's (CEC) EPS, SMUD along with other publicly owned utilities have become

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¹ SB 1368 adds sections 8340 and 8341 to the Public Utilities Code, which becomes effective January 1, 2007.

² Please note that SB 1368's language regarding consistency does not require that the CPUC's and the CEC's regulations be identical.

involved in this proceeding. ³ SMUD was only able to file brief comments on the Final Workshop Report: Interim Emissions Performance Standard Program Framework, R.06-04-009, June 21-23, 2006, issued by the CPUC on October 2, 2006 ("Staff Workshop Report") as SMUD was reviewing the voluminous materials filed by other parties in this proceeding prior to SMUD's involvement.

SB 1368 specifically directs the CPUC to work in consultation with the CEC in establishing its EPS. ⁴ As a part of this consultation process, CPUC representative Julie Fitch attended the CEC's Electricity Committee's workshop in the CEC's Greenhouse Gas Emission Performance Standard for Implementing Senate Bill 1368 Proceeding (CEC's Greenhouse Gas Proceeding" 06-OIR-1) held on December 8, 2005. Because the timeframe adopted by the CEC for development of its regulations is so short, the CEC does not have sufficient time to gather data from the POUs, and develop an EPS and supporting regulations. The CEC has stated its intent to incorporate the record and use information from this proceeding developed by the CPUC to support the CEC's EPS regulations. As stated above, the POUs have not participated in the data gathering and workshop phases of the CPUC's proceeding. Therefore, the CPUC's record does not include information from the POUs on system, market or other types of contracts that are not unit specific. In order to further develop the information upon which the CPUC and the CEC make their decisions, SMUD is providing the following comments and contract information to explain the importance to POUs of system and other contracts that could be characterized as "unspecified". Based upon the importance to SMUD and other POUs of contracts that are not unit specific, SMUD respectfully requests the CPUC make changes to the Proposed Decision to allow system and other contracts for resources that are not unit specific.

These comments also provide suggestions regarding firm renewable contracts. SMUD is concerned that limitations on firm renewable resources could impact the value and price of those renewable resources, and may impact the renewable seller's or purchaser's ability to meet reliability requirements for scheduling power from these sources. Firm renewable resource contracts that do not exceed the measured output of the renewable resource and where the

³ The CPUC began this proceeding prior to the legislature passing and the Governor signing SB 1368 creating greenhouse gas limitations for both load serving entities and publicly owned entities.

⁴ Cal. Publ. Util. Code § 8341(d)(1).

purchasing entity purchases the renewable energy credits bundled along with the energy, should be considered to have the emissions of the renewable resource.

SMUD supports the comments of the California Municipal Utilities Association and the Northern California Power Agency filed in this proceeding on the Proposed Decision. SMUD encourages the CPUC to consider the information provided by the POUs in setting the CPUC's EPS and developing its rules for implementation.

II. <u>A COMPLETE BAN ON UNSPECIFIED CONTRACTS IS INCONSISTENT</u> <u>WITH SB 1368</u>

SB 1368 directed the CPUC to "address" purchases from unspecified resources.

In developing and implementing the greenhouse gases emission performance standard, the commission shall address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.⁵

If the Legislature had intended to ban all contracts with unspecified resources, the Legislature would have stated that ban explicitly in SB 1368. The Legislature did not ban purchases from unspecified resources, instead the Legislature requested that purchases from unspecified resources be addressed by the CPUC. Rules of statutory construction require that all words be given full weight and be read in context when determining legislative intent.

When construing a statute, one must "ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statue themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose."

The Proposed Decision fails to follow SB 1368 because it simply bans all forms of unspecified contracts and fails to create a structure wherein contracts for system power or other contracts that are not unit specific can be used and can satisfy the CPUC's EPS. SB 1368 requests that the CPUC address these contracts, not ban them outright. By banning all contracts without a specified unit, the CPUC has failed to follow the requirement of SB 1368 to address unspecified contracts and has reduced the available options to LSE's to reliably serve their load.

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⁵ Cal. Publ. Util. Code §8341(d)(7).

⁶ Bodell Construction Co. v. Trustees of Cal. State University, 62 Cal. App. 4th 1508, 1515-1516 (1998).

The Proposed Decision justifies its ban of all non-resource specific contracts based upon the finding that LSE's are not and do not plan on using long-term contracts for non-resource specific power. As described below, this finding is not accurate if applied to all POUs. Furthermore, the Proposed Decision does not need to use an all or nothing approach to unspecified contracts in order to meet its stated goal of reducing California's financial risk exposure to compliance costs associated with future greenhouse gas emissions. Allowing unspecified contracts such as system and multiple resource contracts provides much more certainty regarding the emissions from that system or group of resources and allows a reasonably accurate determination of the emissions generated by that contract. With the additional emission related information that can be provided about system or multiple resource contracts, the CPUC could determine whether an unspecified contract meets the requirements of its EPS.

A. The Proposed Decision's premise that requiring all long-term contracts to be specified will not impact procurement flexibility is inaccurate for POUs.

In reaching its conclusion on unspecified contracts the Proposed Decision weighed the information regarding LSE procurement and determined "Based on the record in this proceeding, we also conclude that it is highly unlikely that LSEs will need to enter into any new or renewal power purchase contracts of five years or greater that are unspecified during the transition to a statewide GHG emission limit." We surmise from this conclusion that the Proposed Decision did not focus on finding a solution other than a complete ban on unspecified contracts because such a ban would not impact LSE procurement. Because the Proposed Decision determined these types of resources will not be needed by LSEs, SMUD believes the Proposed Decision does not provide for use of system or multiple resource purchases that are not unit specific but have system averages below the EPS.

Just as each LSE has its own asset portfolio, each POU purchases power to supplement its generation and serve its load differently based upon each POU's load, transmission and generation assets and constraints. Unlike the LSEs, some POUs use "unspecified resources" i.e. contracts for system purchases or market resources, to fill their resource needs. Therefore, the statement, "requiring that all long-term contracts with baseload generation be 'specified' in order

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⁷ Proposed Decision at 122.

⁸ Proposed Decision, pp. 13 & 122.

to demonstrate EPS compliance should not have a significant, if any, impact on an LSE's resource procurement flexibility" is not accurate if applied to all POUs.⁹

POUs use a variety of different types of unspecified long-term contracts for generation that could be found to be baseload under the definition proposed in the Proposed Decision. After review of the definitions of covered resources and contracts in this Proposed Decision, and depending on their interpretation, we have found that many POUs have "unspecified" contracts. After obtaining preliminary information from a small sample of POUs, we have found 20 existing contracts that could be interpreted to be from unspecified resources, depending on the definition of relevant terms that is eventually adopted. Additional contracts involving additional POUs may be impacted by these rules if the CPUC adopts the Proposed Decision's determination that the operation of the facility and not the contract amount dictates whether the contract is for baseload generation. Furthermore, various POUs intend to enter into at least five long-term contracts with unspecified resources within the 2006-2008 time period with some of these contracts covering substantial portions of that POU's load. Although the numbers provided above only cover a small slice of POUs, the contracts used show a very different picture of POU procurement in relation to IOU procurement. Please note that not all POUs use unspecified contracts. However, since the CEC's EPS rules will apply to all POUs, it is important to allow flexibility for the different POU procurement strategies. Each POU, like each individual LSE must look at its load, load growth, transmission, and generation resources when purchasing power for its customers. Since each system is different and each entity has unique assets available to meet its load, the capacity and energy procurement solutions vary between POUs.

As demonstrated by the unspecified contracts discussed above, requiring all long-term contracts to be only with specified, unit contingent resources, would adversely impact SMUD's and other POUs' resource procurement programs and those POUs' ability to reliably serve load at stable prices. Further, jurisdictional LSEs may want to make such purchases in the future, contrary to their current forecast, as market conditions change over time. Therefore, we encourage the CPUC to adopt a more flexible procurement policy along the recommendations

⁹ Proposed Decision, pp. 13 & 122.

¹⁰ Pacific Gas & Electric Company has expressed its interest in keeping this option open for future procurement. Comments of Pacific Gas and Electric Company (U 39E) on Final Staff Recommendations on Greenhouse Gas Emissions Performance Standard Pursuant to SB 1368, at 8 (Oct. 18, 2006).

contained in the following sections.

Although SMUD disagrees with the Proposed Decision's complete ban on all contracts that do not specify a unit, we appreciate the Proposed Decision's acknowledgement that the impact to at least some POUs from such prohibition may be considerably different than the impact on LSEs. ¹¹ At a minimum, SMUD would like to see the acknowledgement that POUs may not be similarly situated added to the Findings of Fact section. We also request that the CPUC recognize this significant difference in POU procurement practices and reflect those differences in their GHG rules.

B. <u>All unspecified contracts are not alike.</u>

The term "unspecified contracts" does not provide a true picture of the range of non-unit specific contracts used to serve load. Probably because these contracts are not used to a large degree by LSE's, the Proposed Decision lumps all of these contracts into the same category and rejects them out of hand. Instead, different types of contracts should be treated differently based upon the available information about the underlying system or resource.

A system purchase from a utility should be assigned an emission value based on the resource mix of the supplying utility. System purchases may come from out-of-state or California based systems. Both SMUD and Los Angeles Department of Water and Power (LADWP) sell power from their systems. When SMUD is selling power, SMUD looks to their system average emissions to determine the emissions generated by that sale. SMUD is a member of the California Climate Action Registry ("Registry") and as such, characterizes all of its emissions to meet the reporting requirements of the Registry. Similarly, NCPA evaluates the emissions from its system purchases now for power content labeling. In the instances of in state systems, system averages should be available to support a CPUC determination of compliance with SB 1368. In addition, where system averages are available or can be obtained by the purchasing entity for out-of-state systems, those averages could be used to compare to the EPS. Thus, for system purchases, the CPUC would have information about the resource mix with which to determine compliance with the EPS. Similarly, POUs and LSEs would be able to determine whether a system purchase would meet the requirements of the applicable EPS.

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¹¹ Proposed Decision, at 122, footnote 153.

In addition to system contracts, a group of resources can be used to supply power to an LSE or POU. This group of resources would not specify a unit but could be grouped to provide improved reliability over a unit specific contract. This type of contract is like a subset of a system contract and can include items like all hydroelectric resources or all geothermal resources. This type of multiple resource contract could also be used for gas fired combined cycle generation. These multiple resource contracts could very well comply with the EPS if the regulations are structured correctly. Because they provide enhanced reliability over unit specific contracts and may provide lower costs, the LSEs and POUs as well as the CPUC and CEC should be able to evaluate these contracts and determine whether they meet the EPS.

Similarly, a purchase of resources from the market, rather than the system of a specific utility, should be assigned an emission value based on the resource mix that constitutes the market in that region, i.e. at California Oregon Border or at Palo Verde. Although we understand the difficulties in determining market sourced power emissions, we believe that additional research should be conducted using the combined knowledge of the CEC and the CPUC to create a value for this power instead of simply dismissing it as too difficult to determine. SMUD supported in its comments on the Staff Workshop Report and continues to support PG&E's recommendation to further evaluate emission from the broad range of contracts that could be classified as unspecified contracts.¹² Dismissing a power source or relegating it to short term purchases reduces the options to California based LSEs and POUs. Reduced options for purchases usually result in higher prices for the power that remains as California LSEs and POUs compete for the same resources to serve their growing load.

C. System and multiple resource contracts provide greater reliability than unit specific purchases.

The Proposed Decision references consultations with California Independent System Operator (CAISO) Staff.

Moreover, it is our understanding from consultations with the ISO staff that for the ISO's system reliability determinations, the ISO relies on specific information about the plant facility and its location within the ISO control area.

¹² Reply Comments of the Sacramento Municipal Utility District on the Interim Emissions Performance Standard Final Workshop Report, at 4 (Oct. 27, 2006); Proposed Decision at 115.

Therefore, the requirement to specify the resources underlying long-term contracts for the purpose of demonstrating EPS compliance is consistent with the type of information that the ISO also requires for these reliability determinations. ¹³

This comment fails to recognize the inherent reliability profile of unit specific contracts. The contracted power is only as reliable as the unit under contract. When the specified unit goes down, the power stops flowing from that source, absent other arrangements. In contrast, a system contract is backed by an entire system of resources and is inherently much more reliable. If one unit goes down, other resources on that system are dispatched or dispatched a higher levels to cover for the unit that is down. Furthermore, if the system power is combined with firm transmission, it satisfies the reliability requirements of the CAISO.

D. System, multiple resource and other unspecified contracts should be allowed, not thrown out wholesale.

The Proposed Decision gets stuck on the idea of imputed emissions and expresses concerns about imputing an emission rate to all unspecified contracts. ¹⁴ POUs or LSEs using system purchases can calculate the emissions of the system based upon the resource mix of that system. The CPUC or a POU could review that calculation to make an informed decision about the resource's compliance with SB 1368. This recommendation is consistent with the recommendation of Southern California Edison in its opening and reply comments on the Staff Workshop Report. ¹⁵ In addition, by looking at individual systems the CPUC would avoid the binary outcome discussed in the Proposed Decision. ¹⁶ Each system has a unique resource mix. The CPUC should look at a proposed system purchase and determine compatibility with SB 1368. This determination would not be applicable to all systems and thus, would not be an all in or all out decision.

A similar analysis could be conducted for multiple resource contracts. The LSE, POU

¹³ Proposed Decision at 122.

¹⁴ Proposed Decision, pp. 11 & 117.

¹⁵ Reply Comments of Southern California Edison Company (U 338-E) on the Final staff Workshop Report and Proposal for an Interim Emissions Performance Standard Program Framework, at 11 (Oct. 27, 2006); Opening Comments of Southern California Edison Company (U 338-E) on Final Workshop Report and Proposal, pp. 10-11 (Oct. 18, 2006).

¹⁶ Proposed Decision, pp. 12 & 117.

and CPUC should be able to evaluate the resources that support the contract and determine whether the mix of resources, their emission rates and dispatch meets the EPS. Upon development of an emissions estimate, data from reliable industry sources for market purchases should be used to determine whether a market purchase passes the EPS.

SB 1368 could have eliminated the use of all unspecified contracts, but it instead requested that both the CPUC and the CEC "address" long-term purchases from unspecified resources. Thus, the CPUC and the CEC should not simply throw out unspecified contracts entirely when reasonable GHG emission profiles are presented by the purchasing entity. SMUD proposes that the emission profile of unspecified contracts be quantified by the purchasing entity using transparent and verifiable data provided by the supplier for system purchases. Purchases that meet SB 1368 standards based on expected average year load and resource conditions throughout the term of the contract should then be accepted as meeting the requirements of SB 1368.

The proposal described above is a reasonable solution that allows the use of some "unspecified contracts" while also providing reasonable information about the GHG profile of those resources pending the development of a specific resource tagging mechanism to track generation attributes.

III. FIRMED RENEWABLE RESOURCE CONTRACTS THAT DO NOT EXCEED THE OUTPUT OF THE RENEWABLE RESOURCE SHOULD BE DETERMINED TO BE COMPLIANT

The Proposed Decision elects to treat all firming contracts alike by stating that all resources underlying a contract must be EPS compliant. Similar to the treatment of unspecified contracts, the Proposed Decision throws out all firmed renewable resources to avoid those contracts wherein the renewable resource is used to cleanup a non-EPS compliant resource. Firmed renewable resources under specific conditions should be determined to be compliant. To avoid the concerns about cleaning up non-compliant resources, firmed renewable contracts that should be determined to be compliant would have the following features:

¹⁷ Cal Publ. Res. Code § 8341 (d)(7) & (e)(8).

¹⁸ Proposed Decision at 74.

¹⁹ Proposed Decision at 72.

- The total megawatt hours delivered would not exceed the output of the renewable resource, and
- The purchasing entity would purchase the renewable energy credits/environmental attributes along with the renewable energy.

For all contracts that have these attributes, the total energy purchased would not exceed the amount of energy produced by the renewable resource. These contracts are usually netted each month so that the energy purchased never gets too far ahead or behind the renewable resource's output. As renewable energy credits are allocated on one for one basis per megawatt hour and are bundled only when necessary with the energy from unspecified resources, the "cleaning" of the output from a non-compliant resource is avoided. The premium associated with the purchase of a bundled renewable energy product should be construed as a utility's intent to meet the legislative requirements, as these purchases still encourage the development of additional renewable resource, and ultimately promote a reduction of greenhouse gas emissions.

Firming intermittent resources is a reliability issue. Reliability standards require reserves to firm deliveries to firm load. Otherwise, should a non-firm renewable product become unavailable in the hour ahead schedule, the entity responsible for scheduling the deliveries would need to cut the load served with that power delivery or violate reliability requirements for power scheduling. It is also critical that intermittent resources be firmed as the amount of intermittent resources continues to grow. In order to balance the electric system, other resources need to be able to back down or ramp up in short time frames in response to variations in the intermittent resource output to keep the system in load-resource balance.

Often an integrated power system is used to firm a renewable resource since many purchasing utilities operate them. If that system had to adjust in response to an intermittent resource variation, the only resources able to dispatch fast enough may be a hydroelectric project or a peaking facility. Using an integrated power system allows the intermittent resource purchaser to adjust to the loss or gain in intermittent energy by using the entire system to adjust for the increase or decrease in energy. Removing system power from those resources that can firm an intermittent renewable product would severely limit the number of resources available to firm

IV. PROPOSED REVISIONS

SMUD recommends that the Proposed Decision be modified to provide for the use of system, multiple resource and upon further development market contracts. SMUD proposes the following changes to the Findings of Fact and Conclusions of Law be made, as well as corresponding changes to Attachment 7, Interim EPS Rules.

Findings of Fact

The following Findings of Fact should be eliminated in their entirety: 125, 126, 129, 134, 139 and 140. Changes to additional Findings of Fact 136, 137 and 138 are shown below.

- 136. Based on the record in this proceeding, it appears highly unlikely that LSEs will be entering into any new or renewal power purchase contracts of five years or greater that are unspecified during the transition to a statewide GHG emissions limit. Based on the record in this proceeding, is appears highly likely that POUs will be entering into new or renewal power purchase contracts of five years or greater that are unspecified during the transition to a statewide GHG emission limit.
- 137. Requiring all long-term contracts with baseload generation be "specified" in order to demonstrate EPS compliance should not have a significant, if any, impact on an LSE's resource procurement flexibility. Requiring all long-term contracts with baseload generation be "specified" in order to demonstrate EPS compliance would have an adverse impact on an POU's resource procurement flexibility.
- 138. The ISO relies on specific information about the plant facility and its location in making system reliability determinations within the ISO control area. The ISO also allows contracts with system or market resources and dedicated transmission to satisfy system reliability.; therefore, the requirement to specify the resources underlying long-term contracts for the purpose of demonstrating EPS compliance is consistent with the type of information that the ISO also requires for these reliability determinations.

Conclusions of Law

Conclusion of Law 36 should be deleted in its entirety. Modifications to Conclusion of

Law 37 are shown below.

37. For the reasons discussed in this decision, it is reasonable and consistent with the intent of SB 1368 to require LSEs to provide transparent and verifiable data showing expected emissions throughout the term of a contract for unspecified resource contracts such as system or multiple resource contracts, based average year load and resource conditions. require the interim EPS rules that LSEs specify all generation facilities underlying long term power purchase contracts subject to the EPS.

In regards to firmed renewable contracts, SMUD recommends a new Finding of Fact be added.

Findings of Fact

Firm renewable contracts that do not deliver energy that exceeds the output of the renewable resource and include both the energy and the environmental attributes of that energy, are determined to have the emissions of the renewable generator.

V. <u>SMUD RESPECTFULLY REQUESTS THAT THE PROPOSED DECISION BE</u> <u>CHANGED TO REFLECT THE COMMENTS OF THE POUS</u>

SMUD requests that the Proposed Decision be modified to allow LSEs to use system, multiple resource and other unspecified contracts with emissions that meet the RPS to serve their load or at a minimum specifically recognize the ability of POUs to use these resources. SMUD also requests that the Proposed Decision be modified to allow renewable contracts that do not exceed the output of the renewable resource and come with the renewable attributes be allowed to be firmed to address reliability problems with interim resources and foster the further development of renewable resources. In addition, SMUD supports the comments of the California Municipal Utilities Association and the Northern California Power Agency, and SMUD recommends that the CPUC incorporate their comments in the Proposed Decision.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the COMMENTS OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT ON THE DECEMBER 13, 2006 PROPOSED DECISION on January 2, 2007, on all known parties to the proceeding #R. 06-04-009 via e-mail to those whose e-mail address is available and by U.S. mail to those who do not have an e-mail address.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 2nd day of January, 2007.

/s/		
Lois Navarrot		

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Via U.S. Mail

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